IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1147 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNARAM GORDHANRAM BISHNOI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1147 of 2004

MR NK MAJMUDAR for Petitioner No. 1

MR SS PATEL, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/11/2004

ORAL JUDGEMENT

Rule. Service of Rule is waived by ld. APP Mr. SS Patel for respondent No.1 State. On consent, Rule is

fixed forthwith.

The Court is convinced only on one point that the order passed by ld. trial Judge is not rational.The discretion which requires to be exercised should be exercised in such a manner that it stands to the test of objectivity. The value of the truck at the relevant point of time, as submitted, was about Rs.4.5 Lakh as the truck being a Mini Truck when the same was purchased in the year 1977. Considering the depreciated value in the year when it was seized for the offence under the Bombay Prohibition Act, the ld. trial Judge ought to have released the truck on solvent surety of Rs.3.50 Lakh and Personal Bond of the like amount by the petitioner himself, so that in the event of order of confiscating the vehicle, the government can realise the amount equal to the value of the truck.

In view of above, this Court is inclined to exercise extra-ordinary jurisdiction vested in this Court as this is a case of failure of exercise of proper jurisdiction. The petition is, therefore, allowed. The impugned order dated 9.8.2004 passed by trial Judge in Cri.Rev. Application No. 33/2004 is modified to the extent that ld. trial Judge shall release the muddamal truck in question on the petitioner furnishing solvent surety of Rs.3.50 Lakh and Personal Bond of Rs.3.50 Lakh and on other terms and conditions that may be deemed just and fit by the ld. trial Judge. All other terms and conditions enumerated in the impugned order shall stand unaltered. It is further directed that the petitioner shall file an undertaking that he shall see that truck in question shall not be used in illegal activities and on failure in complying with this condition, the trial Court can pass appropriate seizure order of the vehicle in question pending trial.

Rule is made absolute to the aforesaid extent.

D.S. Permitted.

[C.K. BUCH, J]

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